

AGENDA
HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE
1:30 P.M.
Room EW41
Tuesday, January 08, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Raybould	Rep Nielsen	Rep Morse
Vice Chairman Eskridge	Rep Thompson	Rep Trujillo
Rep Anderson(1)	Rep Anderson(31)	Rep Smith
Rep Hartgen	Rep Anderst	Rep Rusche
Rep Vander Woude	Rep Mendive	Rep Woodings
Rep DeMordaunt	Rep Monks	

COMMITTEE SECRETARY

Jean Vance
Room: EW16
Phone: 332-1128
email: henv@house.idaho.gov

MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Tuesday, January 08, 2013

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Eskridge, Representatives Anderson(1), Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderson(31), Anderst, Mendive, Monks, Morse, Trujillo, Smith, Rusche, Woodings

**ABSENT/
EXCUSED:**

GUESTS: Dan Olberding, Idaho Grain Producers

Chairman Raybould called the meeting to order at 1:30 p.m.

Chairman Raybould welcomed the legislators and requested an introduction from the committee members. Chairman Raybould introduced Legislative Attaches Jean Vance and Brady Gaschler to the committee.

Chairman Raybould instructed the committee on internet search and review of administrative rules. A discussion on protocol addressing rules was held. Chairman Raybould also reminded legislators to bring their laptop computers to meetings throughout the 2013 Legislative Session.

Chairman Raybould received questions regarding legislation and reports to come before the committee during the current session. Those present speculated on the possibilities.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:06 p.m.

Representative Raybould
Chair

Jean Vance
Secretary

AGENDA
HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE
1:30 P.M.
Room EW41
Monday, January 14, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	Rules Discussion	Dennis Stevenson, Administrative Rules Coordinator
	Department of Environmental Quality Administrative Rules:	
58-0123-1201	Administrative Procedure Before the Board of Environmental Quality	Doug Conde
58-0105-1201	Standards for Hazardous Waste	Orville Green
58-0108-1101	Public Drinking Water Systems	Barry Burnell
58-0101-1201	Control of Air Pollution in Idaho	Tiffany Floyd
58-0101-1202	Control of Air Pollution in Idaho	Tiffany Floyd
58-0101-1203	Control of Air Pollution in Idaho	Tiffany Floyd

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Raybould	Rep Nielsen	Rep Morse
Vice Chairman Eskridge	Rep Thompson	Rep Trujillo
Rep Anderson(1)	Rep Anderson(31)	Rep Smith
Rep Hartgen	Rep Anderst	Rep Rusche
Rep Vander Woude	Rep Mendive	Rep Woodings
Rep DeMordaunt	Rep Monks	

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MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Monday, January 14, 2013

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Eskridge, Representatives Anderson(1), Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderson(31), Anderst, Mendive, Monks, Morse, Trujillo, Smith, Rusche, Woodings

ABSENT/EXCUSED: None.

GUESTS: Roxana Eixenburger, Intern with Rep. Sue Chew; Doug Conde, Deputy Attorney General; Curt Fransen, Director of the Idaho Department of Environmental Quality (IDEQ); Orville Green, Mike Simon, Tiffany Floyd, Barry Burnell, and Paula Wilson IDEQ; Neil Colwell, Avista Corp; Dennis Stevenson, Administrative Rules Coordinator; Natalie Stoker, Amanda Garrity, Ashley Porter, Alice Cannon, Kendall Armstrong, Kristine Fielding, Courtney Frost, Paisley Worthington, and Pamela Dell, American Heart Association, Idaho Youth Lobby

Chairman Raybould called the meeting to order at 1:29 p.m.

MOTION: **Rep. Smith** made a motion to approve the minutes of the January 8, 2013. **Motion carried by voice vote.**

Dennis Stevenson, Administrative Rules Coordinator, explained the process for approval and rejection of Administrative Rules. Responding to questions from the committee, Mr. Stevenson cautioned the committee on "word-smithing" or inserting alterations which may change the intent of the rule. He said it was the responsibility of the committee to approve or reject, not to change.

Curt Frandsen, Director of the Idaho Department of Environmental Quality, introduced the members of his staff who would introduce the changes to the rules for 2013. He said that all the changes to the rules were in compliance to federal requirements and explained the process of incorporation of rules by reference.

DOCKET NO. 58-0123-1201: **Doug Conde**, Deputy Attorney General and legal advisor to the Idaho Department of Environmental Quality (IDEQ), presented **Docket No. 58-0123-1201** to the committee. He explained that in the 2012 Legislative Session, the Idaho Administrative Procedures Act (APA) was changed to require all agencies to conduct negotiated rulemaking, if it was feasible to do so. He said that the APA process of rulemaking had long been followed by the IDEQ; however, the changes were made to ensure the rules were consistent to 2012 legislative law.

Members of the committee raised questions regarding negotiated rulemaking, public notification, public comment and individual participation. **Mr. Conde** said that the new language in **Docket No. 58-0123-1201, Sections 811, 814, and 830** had not changed the level of transparency and that individuals access to the public process was the same.

MOTION: **Rep. Rusche** made a motion to approve **Docket No. 58-0123-1201.**

Committee discussion continued in regard to primacy over federal law and in regard to which governmental levels were more receptive to state generated concerns. It was explained that state government cannot change federal law and that state agencies are more likely to understand the problems faced by the State of Idaho.

VOTE ON MOTION: **Rep. Raybould** presented the motion to the committee. **Motion carried by voice vote.**

**DOCKET NO.
58-0105-1201:**

Orville Green, IDEQ, presented **Docket No. 58-0105-1201** to the committee. He explained that the rulemaking information which he would deliver was part of a routine, annual procedure that IDEQ performs to satisfy the consistency and stringency requirements of the Idaho Hazardous Waste Management Act. He also explained that the public participation process had been completed and that the rule change would generate no increased costs. Three regulations from the Federal Register were proposed for adoption by reference. They are: (1) revising the rule to include best demonstrated available technologies as additional treatment standards where numerical standards are difficult to ascertain by analysis, (2) changing the manifest form requirement from red ink to accept distinct ink color or another distinguishing method, and (3) changing a typographical error in an organic hazard waste listing.

MOTION:

Rep. Morse made a motion to approve **Docket No. 58-0105-1201**. **Motion carried by voice vote.**

**DOCKET NO.
58-0108-1101:**

Barry Burnell, IDEQ, presented **Docket No. 58-0108-1101** to the committee. He explained that the rule change complies with **S 1220**, which was passed by the 2005 Legislature, directing IDEQ to include the engineering design standards in the drinking water rules. Mr. Brunell stated that the new water treatment technologies of membrane filtration and ultra violet disinfection were also included. In addition, the rule modified the pilot testing of treatment systems and reorganized the preliminary engineering reports section.

Mr. Brunell stated that the public participation process was successful and that suggestions from the public were incorporated into the proposed rule. There was no increase or additional estimated cost to the regulated community as a result of the proposed changes. He said that the rule clarifies the drafting of preliminary engineering reports and the development of pilot studies.

Members of the committee were concerned with the time frame for repairing or replacing a failed backflow assembly and the risk to the public. **Mr. Brunell** explained that prior to the proposed rule there had been no time limit for repairs and that the 10 working-day limit for reparation may not be optimal but was far more suitable than the prior rule.

Rep. DeMordaunt declared Rule 38 stating that he was a manager of a community water system. He said that **Section 501.04, paragraph f**, entitled: Redundancy, was a concern because water systems for small communities of 15 homes or 25 people were included and may be overly impacted economically.

Mr. Brunell said that the rule was not retroactive and that redundancy was part of Idaho's public water systems. He also stated that smaller systems do not need a fire flow.

Answering additional questions from the committee regarding compliance and mechanisms for variances for naturally mineralized water pollutants in areas such as North Idaho, **Mr. Brunell** stated that of the 2,000 water systems in Idaho, 90 percent are compliant. He also stated that there were waivers for testing. He added that Twin Falls was able to solve their arsenic pollution by blending water sources and that some "under the sink" applications were successful for removal of contaminants. In response to a question referencing blue-green algae bloom, he said that it can be lethal to pets but with respect to surface water, it was managed by public water systems.

MOTION:

Rep. DeMordaunt made a motion to approve **Docket No. 58-0108-1101** with the exception of **Section 501.04, paragraph f**. He argued that the broad application could be a difficult economic impact for small water organizations.

Rep. Anderson (1) declared Rule 38 stating that he was a director of a water district. Further committee discussion concerning the origin of the rule, it's stringency in comparison to federal law, and the true representation of smaller community water districts during the public comment.

Chairman Raybould informed the committee that the IDEQ members were scheduled in the Senate at 3:00 p.m. After verification as to the availability of **Barry Burnell** and **Tiffany Floyd**, IDEQ, for Wednesday, January 16th, Chairman Raybould informed the committee that the motion would remain before the committee on Wednesday, January 16, 2013.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 3:02 p.m.

Representative Raybould
Chair

Jean Vance
Secretary

AGENDA
HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE
1:30 P.M.
Room EW41
Wednesday, January 16, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	Idaho Department of Environmental Quality Administrative Rules:	
58-0108-1101	Public Drinking Water Systems	Barry Burnell
58-0101-1201	Control of Air Pollution in Idaho	Tiffany Floyd
58-0101-1202	Control of Air Pollution in Idaho	Tiffany Floyd
58-0101-1203	Control of Air Pollution in Idaho	Tiffany Floyd

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COMMITTEE MEMBERS

Chairman Raybould	Rep Nielsen	Rep Morse
Vice Chairman Eskridge	Rep Thompson	Rep Trujillo
Rep Anderson(1)	Rep Anderson(31)	Rep Smith
Rep Hartgen	Rep Anderst	Rep Rusche
Rep Vander Woude	Rep Mendive	Rep Woodings
Rep DeMordaunt	Rep Monks	

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MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Wednesday, January 16, 2013

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Eskridge, Representatives Anderson(1), Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderson(31), Anderst, Mendive, Monks, Morse, Trujillo, Smith, Rusche, Woodings

**ABSENT/
EXCUSED:** None.

GUESTS: Director Curt Frandsen, Tiffany Floyd, Mike Simon, Doug Conde, Barry Burnell, and Paula Wilson, Idaho Department of Environmental Quality (IDEQ); Brenda Tominaga, Idaho Water Policy Group, Inc.; Dennis Stevenson, Administrative Rules Coordinator; John Eaton, Idaho Association of Realtors; Kent Lauer, Idaho Farm Bureau; Roxana Exenberger, Intern with Rep. Sue Chew; Dale Atkinson, citizen.

Chairman Raybould called the meeting to order at 1:31 p.m.

MOTION: **Rep. Thompson** made a motion to approve the minutes of the January 14, 2013, meeting. **Motion carried by voice vote.**

Chairman Raybould reminded the committee that there was a motion to approve **Docket No. 58-0108-1101** with the exception of **Section 501.04, paragraph f.** before the committee.

**VOTE ON
MOTION:** **Motion carried by voice vote.**

**DOCKET NO.
58-0101-1201:** **Tiffany Floyd**, IDEQ, presented **Docket No. 58-0101-1201** to the committee. She explained that the proposed rule included: (1) revisions to update three air quality definitions, (2) language clarifications in the Permit to Construct exemption criteria, and (3) corrections to typographical errors in the Toxic Air Pollutant Increment Rules. She said that the language supervising nonmetallic mineral processing plants, in particularly rock crushers, had been streamlined. She said that industry representatives participated during the public participation meeting. She noted that public comment was incorporated into the rulemaking and that no increased costs would be imposed upon the regulated community.

The committee questioned the involvement of small, topsoil screening operations being subject to regulation, the myriad of rules that may provide a level of government where government need not be, and the addition of stringency.

Ms. Floyd said that the language was to help clarify, for the regulated community, where compliance is necessary. She deferred to **Mike Simon**, IDEQ, who explained that only fixed plants were subject to regulation. He added that if the operation was not fixed, it would still have to follow "best practices."

Regarding additional questions from the committee, **Mr. Simon** said that agricultural operations were exempt from this rule and that if an operation was an underground mine or did not have a rock crusher nor a grinding mill, the regulation would not apply. He said that Micron, Clearwater, and Simplot were the industries mainly involved in public participation. To a question from the committee regarding the public comment received from sand and gravel companies, or the mining industry, Mr. Simon said they had received no comment.

Rep. DeMordaunt requested that in reference to **Docket No. 58-0101-1201, Section 792 paragraph 02, Facilities Not Applicable to 40 CFR, page 51 of Pending Rules**, it be recorded that **Mr. Simon**, IDEQ, said that small, portable screening operations were exempt.

Issues regarding the inability to view the federal regulations being given primacy over the paragraphs being stricken from **Docket No. 58-0101-1201**, prompted members of the committee to question the exact content of the proposed rule on which they were being asked to vote.

Director Curt Frandsen, IDEQ was called upon to clarify the definition of negotiated rulemaking and what was truly negotiable when federal rules were in place. He said that the National Environmental Protection Agency makes the rules and the courts interpret them. He explained that once the federal rule is in place, the margin for state negotiation can be very narrow. He added that trade organizations working on a national level can generate more latitude.

To a question from the committee regarding the regulation of noise from rock crushers, **Mr. Simon** said that noise is regulated at the local level.

MOTION:

Rep. Trujillo made a motion to approve **Docket No. 58-0101-1201**.

**ROLL CALL
VOTE:**

Chairman Raybould requested a roll call vote. **Motion failed by a vote of 8 AYE and 9 NAY. Voting in favor of the motion: Reps. Eskridge, Anderson (1), Anderson (31) Trujillo, Smith, Rusche, Woodings, and Raybould. Voting in opposition to the motion : Reps. Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderst, Mendive, Monks, and Morse.**

**DOCKET NO.
58-0101-1202:**

Tiffany Floyd, IDEQ, presented **Docket No. 58-0101-1202** to the committee. She explained that the rule would allow citizens to have their vehicles repaired at the same business where it was emissions tested. The rule change would also decrease the regulatory burden of the program by allowing for the issuance of extensions in appropriate circumstances such as military personnel or others temporarily outside the United States. She said IDEQ determined that a negotiated rulemaking was not feasible due to the simple nature of the rule and that there were no increased costs for the regulated community.

Concerns were raised by the committee pertaining to portable emissions testing stations becoming fraudulent repair stations; and, loss of privileges facing the noncompliant because they were not within the United States, but had left vehicles in storage.

Dennis Stevenson, Administrative Rules Coordinator, was asked to clarify for the committee the possibility of rejecting an entire rule, in addition to the proposed changes from IDEQ. He said that they could reject the entire rule.

Chair Raybould asked **Director Frandsen** (IDEQ) if he would yield for questions.

Director Curt Frandsen (IDEQ) explained that the rules before the committee represented three years of public input. He said citizens had contacted the agency to make the changes. He also explained the ability of the agency to computer check and/or audit the emissions stations and the auto garages, thus making fraudulent activity less likely. He clarified the vehicle registration extensions explaining several methods of approaching the process without incurring fines or loss of vehicle registration.

In response to a question from the committee, **Ms. Floyd** said that the docket was not necessarily a rule of the Clean Air Act.

Rep. Nielson requested the record show that emissions testing remained mandatory only in Ada and Canyon counties and that the boundaries had not changed in order to be in compliance with federal and state clean air regulations.

MOTION: **Rep. Monks** made a motion to approve **Docket No. 58-0101-1202. Motion carried by voice vote. Reps. Hartgen and Nielsen** requested to be recorded as voting **NAY**.

DOCKET NO. 58-0101-1203: **Tiffany Floyd**, IDEQ, presented **Docket No. 58-0101-1203** to the committee. She explained that the purpose of the rulemaking was the routine annual incorporation by reference citation in Section 107 to ensure rules were consistent with federal regulations revised as of July 1, 2012. In addition the rule updated the definition of Major Facility by adding the major source thresholds for greenhouse gases for consistency. She said a public comment period and hearing were held and that there was to be no increased costs for the regulated community.

Responding to questions from the committee, **Director Curt Frandsen**, said that although the state is not in noncompliance or non-attainment, it could easily change simply by a change in weather patterns.

MOTION: **Rep. Morse** made a motion to approve **Docket No. 58-0101-1203. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 3:16 p.m.

Representative Raybould
Chair

Jean Vance
Secretary

AMENDED AGENDA #4
HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE
1:30 P.M.
Room EW41
Tuesday, January 22, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21787</u>	Concurrent Resolution Commemorating the Creation of Madison County	Chairman Dell Raybould
<u>RS21694</u>	Ratifying and Approving the State Water Plan	Clive Strong, Deputy Attorney General
<u>RS21609</u>	Wood and Mill Yard Debris	Orville Green, Waste Management Division, Idaho Department of Environmental Quality (IDEQ)
Docket No.	Idaho Department of Environmental Quality Administrative Rules:	
<u>Docket No. 58-0101-1201</u>	Incorporation of Federal Rules by Reference (Review)	Director Curt Frandsen, (IDEQ)

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Raybould	Rep Nielsen	Rep Morse
Vice Chairman Eskridge	Rep Thompson	Rep Trujillo
Rep Anderson(1)	Rep Anderson(31)	Rep Smith
Rep Hartgen	Rep Anderst	Rep Rusche
Rep Vander Woude	Rep Mendive	Rep Woodings
Rep DeMordaunt	Rep Monks	

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MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Tuesday, January 22, 2013

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Eskridge, Representatives Anderson(1), Hartgen, Vander Woude, DeMordaunt, Nielsen, Thompson, Anderson(31), Anderst, Mendive, Monks, Morse, Trujillo, Smith, Rusche, Woodings

ABSENT/EXCUSED: None.

GUESTS: Director Curt Frandsen, Paula Wilson, Orville Green, Mike Simon, Tiffany Floyd, and Dean Ehlert, Idaho Department of Environmental Quality (IDEQ); Brenda Tominaga, Idaho Ground Water Appropriators; Clive Strong, Harriet Hensley and Lisa Carlson, Idaho Attorney General's Office; Brad Hunt, Office of Autism Research Coordination; John J. Williams, Bonneville Power Administration; Raeleen Welton, Westerberg & Associates; Jack Lyman, Idaho Mining Association.

Chairman Raybould called the meeting to order at 1:29 p.m.

MOTION: **Rep. Smith** made a motion to approve the minutes of the January 16, 2013 meeting. **Motion carried by voice vote.**

RS 21787: **Rep. Raybould** presented **RS 21787**, the Concurrent Resolution to commemorate the 100th Anniversary of the creation of Madison County.

MOTION: **Rep. Nielsen** made a motion to introduce **RS 21787**. **Motion carried by voice vote.**

RS 21694: **Clive Strong**, Deputy Attorney General, presented **RS 21694** to the committee. He explained that the legislation would grant approval of the Comprehensive Idaho State Water Plan which had been in review for the past six years and had not been given legislative approval since the 1997 Legislative Session. He said there had been changes in water practices that needed to be reflected in an updated plan.

In response to questions from the committee regarding water rights adjudication, **Mr. Strong** said that adjudication proceedings throughout the newly formed Salmon/Clearwater Basin were nearly completed and that the manifested use had not changed. He also said the new basin was in conformity to the re-adjudication process which has been ongoing throughout the state.

To questions from the committee concerning interstate aquifers and shared water management, **Mr. Strong** stated that Idaho followed the Supreme Court decisions and the agreements made in interstate compacts. In addition, he stated that the State of Idaho was extremely vigilant in guarding its water.

MOTION: **Rep. Woodings** made a motion to introduce **RS 21694**. **Motion carried by voice vote.**

Chairman Raybould turned the gavel over to **Vice Chairman Eskridge**.

RS 21609: **Orville Green**, Waste Management Division, IDEQ, presented **RS 21609** to the committee. He explained that the legislation changed the Wood and Mill Yard Debris Committee meetings to an as-needed basis upon written request to the IDEQ, and not the two meetings a year which were currently directed by statute.

In response to a comment from the committee, indicating that an actual savings to the IDEQ would occur if the legislation were adopted, rather than having no fiscal impact as was stated in the Statement of Purpose, **Mr. Green**, agreed.

MOTION: **Rep. Anderson(1)** made a motion to introduce **RS 21609. Motion carried by voice vote.**

DOCKET NO. 58-0101-1201: **Director Curt Frandsen**, IDEQ, introduced staff members Tiffany Floyd, Mike Simon, and Attorney Lisa Carlson to the committee. He indicated that the IDEQ had additional data to clarify concerns on **Docket No. 58-0101-1201.**

Tiffany Floyd guided the committee through the preliminary draft rule process. She cleared up a statement that had been given in the previous committee meeting, saying that Simplot Inc., was the only industry that had responded during the public participation. She concentrated her presentation on the sections of the rule where language had been updated and where incorporation of federal rule by reference had taken place. She also noted that in one outdated section, the language had been stricken but that no federal rule existed, leaving no governing rule in either state nor federal statute.

In response to a question from the committee regarding screening operations, **Ms. Floyd** directed the committee members to read from Section 792.01 Applicability and Designation of Affected Facility; also, Section 792.02 Facilities Not Applicable to 40 CFR.

Rep. Morse invoked Rule 38 stating a possible conflict of interest. He has an owner/tenant relationship with IDEQ in his district, but said he would be voting on the legislation.

MOTION: **Rep. Trujillo** made a motion to approve **Docket No. 58-0101-1201.**

In response to a question from the committee as to the need for a motion to reconsider, **Chairman Raybould** explained that since the rule had been previously before the committee and a motion had failed, and since the IDEQ had been invited to review the rule, a simple motion was in order.

VOTE: **Motion carried by voice vote.**

Vice Chairman Eskridge turned the gavel over to **Chairman Raybould.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:32 p.m.

Representative Raybould
Chair

Jean Vance
Secretary